

## STATE PRICE AGREEMENT GENERAL TERMS AND CONDITIONS (SERVICES)

### Definitions

“Order” shall refer to any purchase order, contract, or other authorized agreement used to order the services in this price agreement. An order amended consistent with the requirements of any state agency, department, institution, or political subdivision shall also be governed by the same terms and conditions.

“Ordering Entity” means the State agency, department, institution, or political subdivision that places an order, unless the entities authorized to place orders under this price agreement are otherwise specified in this price agreement.

“This contract” or “the contract” shall refer to the integrated agreement consisting of the “order” and the terms of this price agreement.

### Orders

The State of Colorado shall incur no financial obligations under this price agreement. Any financial obligation for performance of services under this agreement shall be incurred through the orders placed by State agencies, departments, institutions, and political subdivisions consistent with the terms of this price agreement. The Division of Purchasing shall not be liable to the Contractor for any breach by another ordering entity of any obligation under an order for services under this price agreement. There is no guarantee that any specific volume will be purchased under the price agreement.

Whenever any order by an eligible State agency, department, institution, or political subdivision refers to this price agreement, the agreement between the parties shall consist of the terms of such order and this price agreement, except as modified consistent with this price agreement.

Orders will specify:

1. A delivery date or performance period;
2. A price, not-to-exceed amount, or not-to-exceed estimate (broken down by labor category, if applicable), including a not-to-exceed ceiling for reimbursement of travel, lodging, and per diem.
3. Software, data, and/or document deliverables;
4. A delivery address (not a post office box);
5. Facilities or other property to be furnished by the ordering entity;

6. A billing address;
7. A user point-of-contract name and telephone.

Unless otherwise specified in the order, delivery will be F.O.B. destination, with the contractor responsible for any costs of transportation or shipping.

#### Order of Precedence

Except as otherwise specified in this agreement, the terms of this price agreement may not be modified or contradicted in any order by a State agency, department or institution without approval by the Division of Purchasing. Any conflict or inconsistency between the terms of an order and this price agreement shall be resolved by giving effect first to the terms of this price agreement other than these general terms and conditions, then these general terms and conditions, and finally the terms of the order.

#### Price Agreement and Order Term

Orders may be placed consistent with the terms of this price agreement during the period specified on page one of this agreement. Except as otherwise specified, this price agreement may be renewed for four (4) one-year renewal periods by written notice to the contractor deposited in the mail before the end of the then-current performance period. The total duration of this price agreement, including the exercise of any options under this clause, shall not exceed five (5) years, unless another period is specified in this price agreement.

Orders must be placed pursuant to this price agreement prior to the expiration date but may have a delivery date or performance period up to 120 days past the then-current expiration date of this price agreement. The contractor is reminded that financial obligations of the State of Colorado and political subdivisions payable after the current applicable fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

Notwithstanding the expiration or termination of this price agreement, the contractor agrees to perform in accordance with the terms of any orders then outstanding at such expiration or termination. The contractor shall not honor any orders placed after the expiration or termination of this price agreement, or otherwise inconsistent with its terms. Orders from any indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this price agreement may not be placed after the expiration or termination of this price agreement, notwithstanding the term of any such indefinite delivery order agreement.

#### Payment

The ordering entity shall pay the contractor the contract price (for projects negotiated as fixed price orders or guaranteed not-to-exceed prices using rates specified herein) or at the contract rate for services performed and accepted or supplies delivered and accepted (for orders priced

otherwise). Unless otherwise specified in the order, payments will be made based on the monthly submission of statements detailing the dates, quantity, and description of services performed. Incorrect payments to the contractor due to omission, error, fraud, or defalcation may be recovered from the contractor by deduction from subsequent payments under orders or other contracts between the ordering entity and the contractor.

In the event of renewal of this price agreement, or any amendment of its terms (including prices), unless otherwise specified in the order, the contractor shall perform in accordance with the terms of the price agreement current at the time of the order, and invoice at the rates in the price agreement in effect at the time services are performed under the order. Unless otherwise specified in the order, if the parties have agreed to a firm, fixed price or guaranteed “not to exceed” ceiling price for completion of a project, the contractor will invoice monthly during progress of the work at the rates in the price agreement current at the time of the order.

Unless otherwise specified in the order, for State work requested outside a 50 mile radius from Denver (in the case of ordering entities in the Denver metropolitan area), or from the location of the work (in the case of other State ordering entities), the State entity will pay the then-current State rates for travel, lodging, and per diem, not to exceed the ceiling amount in the order. The ordering entity must consent in advance to work that will require reimbursement under this provision.

Any applicable cash discount period will start from the date of receipt of an acceptable invoice, or from the date of receipt of acceptable products/services at the specified destination by an authorized agency representative, whichever is later.

State law and regulations provide that vendors will be paid within forty-five days after receipt of products or services and a correct notice of amount due, unless otherwise agreed to by special conditions specified in the order. A State liability not paid within forty-five days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the forty-sixth day at the rate of one percent per month on the unpaid balance until paid in full. A liability shall not arise if a good faith dispute exists as to the agency’s obligation to pay all or a portion of the liability. Vendors shall invoice State ordering entities for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid, and the applicable interest date. (Section 24-30-202(24), C.R.S., as amended)

### Reporting

Contractor will submit quarterly volume reports to the Division of Purchasing showing total number of hours and the hourly rate per order and per agency. The first report will be due on or before the 15th day following the end of each quarter. Failure to submit these reports in a timely manner may be cause for termination of the price agreement. The Division of Purchasing reserves the right to inspect and audit the contractor’s records regarding any and all State projects performed by the contractor, and each ordering entity has the right to inspect and audit the contractor’s records regarding any order placed by the ordering entity.

### Communications

With respect to orders placed by State ordering entities, all communications, including reports, notices, and advice of any nature, concerning administration of orders placed under this price agreement, must be furnished solely to the purchasing agent within the ordering entity's purchasing office, or to such other individual identified in writing in the order.

### Taxes

State ordering entities are exempt from federal excise taxes under Chapter 32 of the Internal Revenue Code (No. 84-730123K) and from state and local government use taxes (Sections 39-26-114(a) and 203, C.R.S., as amended). Vendor is hereby notified that when materials are purchased for the benefit of State ordering entities, some political subdivisions require the vendor to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the ordering entity, nor will any prices or rates in this price agreement be adjusted on account of such taxes.

### Approval and Placement of Personnel

Unless otherwise specified in the order, the ordering entity retains the right of approval of each individual proposed by the contractor, based on resumes to be provided by the contractor and, if needed, oral interviews. Any individual assigned to a project in response to an order placed under this price agreement who fails to perform satisfactory work, or comply with the ordering entity's work rules and procedures, or who in the opinion of the ordering entity fails to cooperate and work effectively with other project personnel, will be replaced by the contractor upon request by the ordering entity. The remedy specified herein is not exclusive, and in addition to, any other remedy specified in this price agreement.

### Confidentiality

In the event the contractor or its employees shall obtain access to any confidential information, records or files of the ordering entity in connection with the performance of its obligations under this agreement or any order placed pursuant to this agreement, the contractor shall keep such records, files, and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the ordering entity. "Confidential information, records or files" shall not mean information which the ordering entity has denominated in writing as not confidential; or information which at the time of disclosure is in the public domain by having been printed and published and widely available to the public, e.g. information in public libraries or repositories. The contractor shall notify its employees in writing that they are subject to the confidentiality requirements set forth above.

#### Facilities and/or Property Furnished by the Ordering Entity

a. The ordering entity shall deliver to the contractor, for use in connection with and under the terms of the contract, the facilities or property described in the order together with any related data and information that the contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "government-furnished property").

b. The ordering entity and its designees shall have access at all reasonable times to the premises in which any government-furnished property is located for the purpose of inspecting the property. The contractor shall maintain an inventory and accountability system acceptable to the ordering entity, and mark or tag the property in accordance with reasonable procedures of the ordering entity.

c. Risk of loss. Unless otherwise provided in the order, the contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, government-furnished property or facilities upon its delivery to or use by the contractor. However, the contractor is not responsible for reasonable wear and tear to property of the ordering entity or for government-furnished property properly consumed in performing the order.

d. Upon completing the order, or at such earlier dates as may be fixed by the ordering entity, the contractor shall submit, in a form acceptable to the ordering entity, inventory schedules covering all items of government-furnished property not consumed in performing the contract or delivered to the ordering entity. The contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the government-furnished property as may be directed or authorized by the ordering entity. The net proceeds of any such disposal shall be credited to payment due under the order or shall be paid to the ordering entity as it may direct.

#### Inspection and Acceptance

Unless otherwise specified in the order, the ordering entity has the right to inspect services provided under the contract at all reasonable times and places during the term of the order. "Services" as used in this clause includes services performed or written work produced (whether in human or machine readable format) in the performance of services. If any of the services do not conform with contract requirements, the ordering entity may require the contractor to perform the services again in conformity with contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by reperformance, the ordering entity may (1) require the contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the ordering entity to terminate the order pursuant to the terms of the contract, or to exercise its remedies otherwise available under the contract or at law.

#### Rights in Data, Documents, and Computer Software (Ownership by the Ordering Entity)

Except as otherwise specified in the order, any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by contractor in

the performance of its obligations under any order shall be the exclusive property of the ordering entity, and all such materials shall be delivered to the ordering entity by the contractor upon completion, expiration or termination of the contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of contractor's obligations under the contract without the prior written consent of the ordering entity; provided, however, that contractor shall be allowed to use non-confidential materials for writing samples in pursuit of other work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use written works.

#### Data and Document Deliverables

The contractor shall deliver by the dates specified in the order the data or documents described therein. Unless otherwise specified, software documentation shall be delivered that meets the following standards:

a. The documentation shall be in paper, human readable format, which clearly identifies the programming language and version used, and when different programming languages are incorporated, identifies the interfaces between code programmed in different programming languages.

b. The documentation shall contain source code in a paper, human readable format, which describes the program logic, relationship between any internal functions, and identifies the disk files which contain the various elements of the code.

c. Detailed "commenting" of source code may be used to partially satisfy the documentation requirements, although documentation shall also include a flow chart which identifies the program flow between files and functions. Comments may be used to document internal flow control in functions.

d. Files containing the source code shall be delivered or may be left on the host machine so long as the files and their location are identified, and their significance to the program described, in the documentation.

e. Documentation shall describe error messages and the location in the source code, by page, line number, or other suitable identifier, where the error message is generated.

It is the intent of the parties that documentation be written so persons reasonably proficient in the use of the program language involved can efficiently use the documentation to understand the program structure, iterative and other control techniques, and decipher error messages should they occur. The contractor warrants that the delivered software will be sufficiently descriptive to enable maintenance and modification of the software to permit change to addresses and telephone numbers in computer generated documentation, addition of fields to the database, revisions of report formats, including breakpoints and summary computations, and other routine maintenance and modification of the software that is reasonably foreseeable for the intended uses of the software.

## Year 2000 Warranty

Unless otherwise specified in the order, the contractor warrants that any software, firmware, or supplies delivered, or services performed, under an order against this agreement to be used before, during, and after the turn of the century (January 1, 2000) are "Year 2000 compliant." "Year 2000 compliant" means fault-free performance in the processing of date and date-related data (including, but not limited to calculating, comparing, and sequencing) by all software products, firmware, and supplies, individually and in combination as a system, when used in accordance with the product documentation provided by the contractor. Fault-free performance means :

- no invalid or incorrect results or abnormal termination prior to, during, and after January 1, 2000 as a result of date or date-related data or data processing that represents or references different centuries or more than one century; and
- proper calculation and handling of leap years; and
- except for normal user interfaces (e.g. four digit date entry) identified in the contractor's or vendor's documentation, such date data processing shall be transparent to the user.

In the event this warranty is breached, the ordering entity may elect to (1) return the software or supply and receive a refund of the purchase price (in the case of delivered software or supplies) or (2) require the contractor to make all code revisions or repairs/replacements of firmware or supplies, as well as revisions to associated documentation, at no cost to the ordering entity in order to ensure that the software, firmware or supplies are Year 2000 compliant so long as notice of such defect is provided no later than 90 days after discovery. This warranty shall survive acceptance of the software, firmware, or supplies and is not subject to any disclaimer or limitation of warranty or other limitation of the contractor's liability which may be specified in the contract or purchase order, or any exhibits, appendices, or any other document attached or incorporated in the contract or purchase order by reference. The remedies specified herein shall not be exclusive remedies and shall not limit any other remedy at law or equity available to the ordering entity.

## Remedies

In addition to any other remedies provided for in this agreement or the order, and without limiting its remedies otherwise available at law, the ordering entity may exercise the following remedial actions if the contractor substantially fails to satisfy or perform the duties and obligations in the contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect, improper performance, activities, or inaction by contractor. These remedial actions are as follows:

1. Suspend contractor's performance pending necessary corrective action as specified by the ordering entity without contractor's entitlement to adjustment in price/cost or schedule; and/or
2. Withhold payment to contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

3. Request the removal from work on the contract of employees or agents of contractor whom the ordering entity justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract is contrary to the public interest; and/or

4. Deny payment for those services or obligation which have not been performed and which due to circumstances caused by contractor cannot be performed or if performed would be of no value to the ordering entity. Denial of the amount of payment must be reasonably related to the amount of work or performances lost to the ordering entity.

5. Terminate the contract for default.

The above remedies are cumulative and the ordering entity, in its sole discretion, may exercise any or all of them individually or simultaneously.

#### Termination for Convenience

Unless otherwise specified in the order, an ordering entity may terminate an order at any time the ordering entity determines that the purposes of the contract would no longer be served by completion of the performance. The ordering entity shall effect such termination by giving written notice of termination to the contractor and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, research, data, studies, surveys, and reports, software, photographs, negatives or other documents or material prepared by the contractor under the contract shall, at the option of the ordering entity, become its property. Such a termination shall be at no cost to the ordering entity, but the ordering entity shall pay at the price agreement rate for services performed and accepted by the ordering entity.

This price agreement may be terminated by either the State or the contractor upon sixty (60) days written notice. Upon notice of termination, no orders may be accepted by the contractor with performance periods extending beyond the effective date of the termination. However, subject to the right of the ordering entity to terminate, or as otherwise agreed between the parties, the contractor will perform obligations consistent with this agreement for orders in effect on the effective date of the termination.

#### Termination for Default/Cause

If, through any cause, the contractor shall fail to fulfill, in a timely and proper manner, its obligations under this agreement or orders under this agreement, the State shall thereupon have the right to terminate this agreement, or an ordering entity the right to terminate an order, for cause by giving written notice to the contractor of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate, except insofar as the right of the ordering entity to terminate is otherwise defined in the order. In the event of termination, all finished or unfinished documents, research, data, studies, surveys, software and reports or other material prepared by the contractor under the contract shall, at the option of the ordering entity, become its property.



Notwithstanding above, the contractor shall not be relieved of liability for any damages sustained by virtue of any breach of the contract by the contractor.

Where this agreement is terminated by the State for default, no orders may be accepted by the contractor after the effective date of the termination. However, subject to the right of the ordering entity to terminate, or as otherwise agreed between the parties, the contractor will perform obligations consistent with this agreement for orders in effect on the effective date of the termination.

#### Insurance

a. The Contractor shall obtain, and maintain at all times during the term of this agreement and orders under this agreement insurance in the following kinds and amounts:

(i) Standard Worker's Compensation and Employer Liability as required by State statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment.

(ii) General, Personal Injury, and Automobile Liability (including bodily injury, personal injury, and property damage) minimum coverages:

(1) Combined single limit of \$600,000 written on an occurrence basis.

(2) Any aggregate limit will not be less than \$1,000,000.

(3) Combined single limit of \$600,000 for policies written on a claims-made basis. The policy shall include an endorsement, certificate, or other evidence that coverage extends three years beyond the performance period of this price agreement.

(4) If any aggregate limits are reduced below \$600,000 because of claims made or paid during the required policy period, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document showing compliance with this provision.

b. The State of Colorado shall be named as additional insured on each liability policy.

c. The insurance shall include provisions preventing cancellation without 60 days prior notice by certified mail to the State.

d. The Contractor shall provide certificates showing adequate insurance coverage to the State within 7 working days of award or contract execution, unless otherwise agreed.

#### Independent Contractor Relationship

**THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR**

**SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE ORDERING ENTITY. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THE CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR A THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE ORDERING ENTITIES DO NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE ORDERING ENTITY TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKER'S COMPENSATION (AND SHOW PROOF OF SUCH INSURANCE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.**

#### Licenses, Permits, and Responsibilities

Contractor certifies that, at the time of entering into this agreement, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform the services and/or deliver the supplies covered by this agreement. Contractor warrants that it will maintain all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform this agreement and orders under this agreement, without reimbursement by the ordering entity or other adjustment in contract price. Additionally, all employees of contractor performing services shall hold the required licenses or certification, if any, to perform their responsibilities. Contractor further certifies that, if a foreign corporation or other entity, it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or nonrenewal of necessary licenses, certifications, approvals, insurance, permits, etc. required for contractor to properly perform this agreement or orders under this agreement, shall be grounds for termination of the contract for default.

#### Sovereign Immunity

Notwithstanding any other provision of the contract to the contrary, no term or condition of the contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, section 24-10-101, *et.seq.*, C.R.S., as now or hereafter amended.

### Assignment and Successors

The contractor agrees not to assign rights or delegate duties under this agreement or orders placed under this agreement, or subcontract any part of the performance required under the agreement or orders (other than subcontractors identified in the contractor's bid or proposal response), without the express, written consent of the State, in the case of this price agreement, and the ordering entity, in the case of orders placed under this price agreement.

### Severability

To the extent that the contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of the contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. Any order placed by any enrolled entity pursuant to this price agreement shall be severable, and the Division of Purchasing shall not be a party to any such purchase order or contract.

### Waiver

The waiver of any breach of a term, provision, or requirement of the contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

### Entire Understanding

This agreement and orders placed hereunder are intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment thereto shall have any force or effect whatsoever, unless embodied herein in writing.

### Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that there are terms and conditions of the contract which may require continued performance, compliance, or effect beyond the termination date of the price agreement and order, and such terms and conditions shall survive such expiration or termination of the orders and this price agreement and shall be enforceable by the ordering entity in the event of such failure to perform or comply by the contractor.

### Governing Law

The laws of the State of Colorado shall be applied in the interpretation, execution, and enforcement of this price agreement and orders under it.

### Colorado Special Provisions

The following Colorado Special Provisions, required by Fiscal Rule 3-1, 1 CCR 101-1, shall be applicable to any order placed by an agency, department, or institution of the State of Colorado and shall govern in the event of any conflict or inconsistency between the terms of any order and this price agreement. With respect to paragraph 1 of the Special Provisions, State Controller or designee approval is not required for State purchase orders issued against this price agreement by State purchasing agents.

## **SPECIAL PROVISIONS**

### **CONTROLLER'S APPROVAL**

1. This contract shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado or such assistant as he may designate. This provision is applicable to any contract involving the payment of money by the State.

### **FUND AVAILABILITY**

2. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

### **BOND REQUIREMENT**

3. If this contract involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this State, the Contractor shall, before entering upon the performance of any such work included in this contract, duly execute and deliver to the State official who will sign the contract, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this contract. Such bond shall be duly executed by a qualified corporate surety conditioned upon the faithful performance of the contract and in addition, shall provide that if the Contractor or his subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by such Contractor or his subcontractor in performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment in the prosecution of the work the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond is executed, delivered and filed, no claim in favor of the Contractor arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in lieu of a bond. This provision is in compliance with CRS 38-26-106.

### **INDEMNIFICATION**

4. To the extent authorized by law, the Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

### **DISCRIMINATION AND AFFIRMATIVE ACTION**

5. The Contractor agrees to comply with the letter and spirit of the Colorado Antidiscrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (CRS 24-34-402), and as required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975. *Pursuant thereto, the following provisions shall be contained in all State contracts or subcontracts.*

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer, recruitment or recruitment advertisements; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this non-discrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, State that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the contracting officer, advising the labor union or workers' representative of the Contractor's commitment under the Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and rules, regulations, and relevant Orders of the Governor.

(d) The Contractor and labor unions will furnish all information and reports required by Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, and by the rules, regulations and Orders of the Governor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the office of the Governor or his designee for purposes of investigation to ascertain compliance with such rules regulations and orders.

(e) A labor organization will not exclude any individual otherwise qualified from full membership rights in such labor organization, or expel any such individual from membership in such labor organization or discriminate against any of its members in the full enjoyment work opportunity because of race, creed, color, sex, national origin, or ancestry.

(f) A labor organization, or the employees or members thereof will not aid, abet, incite, compel or coerce the doing of any act defined in this contract to be discriminatory or obstruct or prevent any person from complying with the provision of this contract or any order issued thereunder; or attempt, either directly or indirectly, to commit any act defined in this contract to be discriminatory.

(g) In the event of the Contractor's non-compliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further State contracts in accordance with procedures, authorized in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975 and the rules, regulations, or orders promulgated in accordance therewith, and such other sanctions as may be imposed and remedies as may be invoked as provided in Executive Orders, Equal Opportunity and Affirmative Action of April 16, 1975, or by rules, regulations, or orders promulgated in accordance therewith, or as otherwise provided by law.

(h) The Contractor will include the provisions of paragraphs (a) through (h) in every subcontract and subcontractor purchase order unless exempted by rules, regulations, or orders issued pursuant to Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontracting or purchase order as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation, with the subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the State of Colorado to enter into such litigation to protect the interest of the State of Colorado.

## COLORADO LABOR PREFERENCE

6a. Provisions of CRS 8-17-101 & 102 for preference of Colorado labor are applicable to this contract if public works within the State are undertaken hereunder and are financed in whole or in part by State funds.

b. When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a non-resident bidder from a State or foreign country equal to the preference given or required by the State or foreign country in which the non-resident bidder is a resident. If it is determined by the officer responsible for awarding the bid that compliance with this subsection .06 may cause denial of federal funds which would otherwise be available or would otherwise be inconsistent with requirements of Federal law, this subsection shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with Federal requirements (CRS 8-19-101 and 102).

## GENERAL

7. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract whether or not incorporated herein by reference which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

8. At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

9. Pursuant to CRS 24-30-202.4 (as amended), the state controller may withhold debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the student loan division of the department of higher education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

10. The signatories aver that they are familiar with CRS 18-8301, et. seq., (Bribery and Corrupt Influences) and CRS 18-8-401, et. seq., (Abuse of Public Office), and that no violation of such provisions is present.

11. The signatories aver that to their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described herein:

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day first above written.

Contractor:  
(Full Legal Name) \_\_\_\_\_

State OF COLORADO  
**ROY ROMER, GOVERNOR**

\_\_\_\_\_

By \_\_\_\_\_

Position (Title) \_\_\_\_\_

\*5 EXECUTIVE DIRECTOR

\_\_\_\_\_  
Social Security Number or Federal ID. Number

DEPARTMENT

If Corporation:  
Attest (Seal)

OF \_\_\_\_\_

By \_\_\_\_\_

## APPROVALS

ATTORNEY GENERAL

STATE CONTROLLER

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_